

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

THOMAS R. FREEBURG and SANDRA  
FREEBURG,

Plaintiffs,

v.

NORTHWEST ORTHOPAEDIC  
SPECIALISTS, P.S.; JONATHAN  
P. KEEVE, M.D.; DOUGLAS G.  
NORQUIST, M.D.; TRACY A BERG,  
M.D.,

Defendants.

NO. CV-09-93-EFS

**ORDER DENYING DEFENDANT TRACY  
A. BERG'S MOTION TO STRIKE FOR  
FAILURE TO TIMELY IDENTIFY  
EXPERT WITNESSES**

Before the Court, without oral argument,<sup>1</sup> is Defendant Tracy A. Berg's Motion to Strike for Failure to Timely Identify Expert Witnesses (Ct. Rec. [23](#)). After review, the Court denies Defendant Berg's motion. Plaintiffs did not act in bad faith by their late filing, and their delay was both excusable and harmless. See Fed. R. Civ. P. 37(c)(1); *Wong v. Regents of Univ. Of Calif.*, 410 F.3d 1052, 1062 (9th Cir. 2005); *Yeti by*

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<sup>1</sup> The Court finds that oral argument on this motion is not warranted. LR 7.1(h)(3).

1 *Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1106 (9th Cir.  
2 2001); *Henry v. Gill Indus., Inc.*, 983 F.2d 943, 946 (9th Cir. 1993).

3 Accordingly, **IT IS HEREBY ORDERED:** Defendant Berg's Motion to Strike  
4 for Failure to Timely Identify Expert Witnesses (**Ct. Rec. [23](#)**) is **DENIED**.  
5 The Court's Scheduling Order (**Ct. Rec. [21](#)**) is **AMENDED** so that Defendants'  
6 expert witness disclosures shall be served no later than **July 22, 2010**  
7 and Plaintiffs' rebuttal witness disclosures shall be served no later  
8 than **August 5, 2010**.

9 **IT IS SO ORDERED.** The District Court Executive is directed to enter  
10 this Order and distribute copies to counsel.

11 **DATED** this 9<sup>th</sup> day of July 2010.

12  
13 S/ Edward F. Shea

EDWARD F. SHEA

14 United States District Judge

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